

Remarks/Arguments

The Examiner, in the above-cited office action, has maintained a rejection of all of Applicant's claims (claims 1-15) as obvious under 35 U.S.C. § 103(a). The Examiner has rejected the claims in view of U.S. Patent 5,898,928 to Karlsson in combination with published PCT application WO 00/74415, on which Wallstedt is listed as an inventor.

Applicant reiterates that he does not necessarily agree with the Examiner's characterization of the teachings found and not found in Karlsson and Wallstedt. However, Applicant submitted a Declaration under 37 C.F.R. § 1.131 to show that Wallstedt does not qualify as prior art to the present application, and thus, claims 1, 5, 6, and 14 are patentable because Karlsson alone does not disclose each limitation in any of these claims. Since every dependent claim in the application depends from one of the above-mentioned claims, all the dependent claims in the application are patentable.

The Examiner, in the most recent office action, admits that the Declaration previously submitted established conception prior to the effective date of Wallstedt. Applicant believes that the relevant time periods described in the Declaration are such that it is within the Examiner's purview to presume sufficient due diligence to overcome Wallstedt. Nevertheless, Applicant's undersigned attorney submits the following additional statements as evidence of due diligence. Note that the critical period for diligence begins just prior to the effective date of the reference. M.P.E.P. 715.07(a). The effective date of Wallstedt is December 7, 2000.

The undersigned attorney had been engaged to prepare the present patent application and was in fact in possession of the previously presented engagement letter and invention disclosure form prior to December 6, 2000. From the time the undersigned attorney was in possession of the disclosure form until the filing date of the present application, the undersigned attorney worked reasonably hard on the present application, subject to a reasonable backlog of unrelated matters taken up substantially in chronological order, and to docket constraints.

The undersigned attorney is a registered practitioner. Thus, the statement above is effectively a declaration pursuant to 37 C.F.R. § 10.18(b).

Applicant further submits that he had good and sufficient reasons for not presenting the above facts sooner, such that this response may be entered and considered pursuant to 37 C.F.R. § 1.116(c). Namely, it was hoped that the above facts would not be needed in order to remove Wallstadt as a reference. These facts were therefore not presented out of an abundance of caution with respect to preserving the confidentiality of information about the Applicant's and his Assignee's development activities to the greatest extent possible.

Applicant believes he has responded to all of the concerns raised by the Examiner, he has good and sufficient reasons for not presenting the above prior to final action, and that this response puts the application in condition for allowance. Reconsideration and allowance of this application is hereby requested. If the Examiner anticipates not entering the present response, or issuing another final office action, a telephone interview is respectfully requested.

Respectfully submitted,

Date: 1 Nov 04

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